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6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4259

11 **TAMARA MAE KAEFER**
12 **336 McCabe Drive**
13 **Greensburg, PA 15301**
14 **Pharmacy Technician License No. TCH**
15 **5111**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about June 1, 2012, Complainant Virginia Herold, in her official capacity as the
18 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
19 No. 4259 against Tamara Mae Kaefer (Respondent) before the Board of Pharmacy. (Accusation
20 attached as Exhibit A.)

21 2. On or about March 2, 1993, the Board of Pharmacy (Board) issued Pharmacy
22 Technician License No. TCH 5111 to Respondent. The Pharmacy Technician License was in full
23 force and effect at all times relevant to the charges brought in Accusation No. 4259 and expired
24 on August 31, 2012. This lapse in licensure, pursuant to Business and Professions Code section
25 118(b), does not deprive the Board of its authority to institute or continue this disciplinary
26 proceeding.

27 3. On or about June 8, 2012, Respondent was served by regular and certified mail copies
28 of the Accusation No. 4259, Statement to Respondent, Notice of Defense, Request for Discovery,
and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is:

3 336 McCabe Drive
4 Greensburg, PA 15301.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts
11 of the accusation not expressly admitted. Failure to file a notice of defense shall
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
13 may nevertheless grant a hearing.

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4259.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
20 respondent.

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits, and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. 4259, finds that
26 the charges and allegations in Accusation No. 4259 are, separately and severally, found to be true
27 and correct by clear and convincing evidence.

28 9. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$5,212.50 as of August 3, 2012.

DETERMINATION OF ISSUES

1 1. Based on the foregoing findings of fact, Respondent Tamara Mae Kaefer has
2 subjected her Pharmacy Technician License No. TCH 5111 to discipline.

3 2. The agency has jurisdiction to adjudicate this case by default.

4 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
5 License based upon the following violations alleged in the Accusation which are supported by the
6 evidence contained in the Default Decision Evidence Packet in this case:

7 a. Violation of section 4301(f) of the Business and Professions Code (Code) in that
8 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption
9 in falsifying prescriptions for controlled substances, filling the prescriptions, and charging them
10 to patients' insurance companies.

11 b. Violation of section 4301(j) of the Code by violating section 11170 of the California
12 Health and Safety Code by prescribing and furnishing a controlled substance to herself.

13 c. Violation of sections 4301(j) and (o) of the Code in that Respondent violated section
14 4059(a) of the Code by furnishing a dangerous drug to another individual without a physician's
15 prescription.

16 d. Violation of sections 4301(j) and (o) of the Code in that Respondent violated section
17 4060 of the Code by possessing a controlled substance without a physician's prescription.

18 e. Violation of sections 4301(j) and (o) of the Code in that Respondent violated section
19 4324 of the Code by falsely passing as genuine prescriptions for controlled substances.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED ON October 19, 2012.

G. C. Wossie

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4259

11 **TAMARA MAE KAEFER**
12 **336 McCabe Drive**
13 **Greensburg, PA 15301**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **5111**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about March 2, 1993, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 5111 to Tamara Mae Kaefer (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2012, unless renewed.

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2 JURISDICTION

3 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
4 Consumer Affairs, under the authority of the following laws. All section references are to the
5 Business and Professions Code unless otherwise indicated.

6 4. Section 4300 of the Code states:

7 "(a) Every license issued may be suspended or revoked.

8 "(b) The board shall discipline the holder of any license issued by the board, whose default
9 has been entered or whose case has been heard by the board and found guilty, by any of the
10 following methods:

11 "(1) Suspending judgment.

12 "(2) Placing him or her upon probation.

13 "(3) Suspending his or her right to practice for a period not exceeding one year.

14 "(4) Revoking his or her license.

15 "(5) Taking any other action in relation to disciplining him or her as the board in its
16 discretion may deem proper.

17 ". . . .

18 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
20 shall have all the powers granted therein. The action shall be final, except that the propriety of
21 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
22 Civil Procedure."

23 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
24 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
25 disciplinary action during the period within which the license may be renewed, restored, reissued
26 or reinstated.

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1 **STATUTORY AND REGULATORY PROVISIONS**

2 6. Section 4301 of the Code states:

3 "The board shall take action against any holder of a license who is guilty of unprofessional
4 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
5 Unprofessional conduct shall include, but is not limited to, any of the following:

6 "....

7 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
8 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
9 whether the act is a felony or misdemeanor or not.

10 "....

11 "(j) The violation of any of the statutes of this state, or any other state, or of the United
12 States regulating controlled substances and dangerous drugs.

13 "....

14 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.

18 "

19 7. Section 4021 of the Code states: "'Controlled substance' means any substance listed
20 in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

21 8. Section 4022 of the Code states

22 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
23 humans or animals, and includes the following:

24 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
25 prescription," "Rx only," or words of similar import.

26 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
27 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
28 in with the designation of the practitioner licensed to use or order use of the device.

1 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
2 prescription or furnished pursuant to Section 4006."

3 9. Section 4059(a) of the Code provides, in pertinent part:

4 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
5 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
6 Section 3640.7. . . ."

7 10. Section 4060 of the Code states:

8 "No person shall possess any controlled substance, except that furnished to a person upon
9 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
11 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18 labeled with the name and address of the supplier or producer.

19 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
21 devices."

22 11. Section 4324 of the Code states:

23 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
24 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
25 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
26 state prison, or by imprisonment in the county jail for not more than one year.

27 "

12. California Health and Safety Code § 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

COSTS

13. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

14. Norco and Vicodin are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, are Schedule III controlled substances as designated by Health and Safety Code section 11056(e)(4), and are dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs.

BACKGROUND

15. During 2010, Respondent worked as a pharmacy technician at Safeway Pharmacy. Over the course of her employment, she obtained a pharmacist's passcode and used it to falsify at least 50-100 prescriptions for controlled substances, including some for Vicodin and Norco, which she filled and charged to patients' insurance companies. She provided some of these prescription medications to another individual so that he could sell them.

FIRST CAUSE FOR DISCIPLINE

(Act of Deceit or Corruption)

16. Respondent is subject to disciplinary action under section 4301(f) of the Code in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Prescribing)

17. Respondent is subject to disciplinary action under section 4301(j) of the Code in that Respondent violated section 11170 of the California Health and Safety Code. The circumstances are that Respondent prescribed and furnished a controlled substance to herself.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Illegal Furnishing of Controlled Substances)**

3 18. Respondent is subject to disciplinary action under sections 4301(j) and (o) of the
4 Code in that Respondent violated section 4059(a) of the Code. The circumstances are that
5 Respondent furnished a dangerous drug to another individual without a physician's prescription.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Illegal Possession of Controlled Substances)**

8 19. Respondent is subject to disciplinary action under sections 4301(j) and (o) of the
9 Code in that Respondent violated section 4060 of the Code. The circumstances are that
10 Respondent possessed a controlled substance without a physician's prescription.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Forgery)**

13 20. Respondent is subject to disciplinary action under section 4301(j) and (o) of the Code
14 in that Respondent violated section 4324 of the Code. The circumstances are that Respondent
15 falsely passed as genuine various prescriptions.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Pharmacy issue a decision:

19 1. Revoking or suspending Pharmacy Technician License Number TCH 5111, issued to
20 Tamara Mae Kaefer;

21 2. Ordering Tamara Mae Kaefer to pay the Board of Pharmacy the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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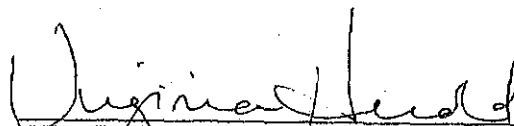
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3. Taking such other and further action as deemed necessary and proper.

DATED:

6/1/12



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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